



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201243016

JUL 31 2012

Uniform Issue List: 402.00-00

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XXXXXXXXXX

Legend:

Taxpayer A	=	XXXXXXXXXX
Financial Advisor F	=	XXXXXXXXXX
Financial Advisor G	=	XXXXXXXXXX
Individual Q	=	XXXXXXXXXX
IRA X	=	XXXXXXXXXX XXXXXXXXXX
Plan C	=	XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX
Account R	=	XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX
Account S	=	XXXXXXXXXX XXXXXXXXXX
Financial Institution M	=	XXXXXXXXXX
Financial Institution N	=	XXXXXXXXXX
Amount B	=	XXXXXXXXXX
Date 1	=	XXXXXXXXXX
Date 2	=	XXXXXXXXXX

XXXXXXXXXX

Page 2 of 4

Date 3 = XXXXXXXXXXXX

Date 4 = XXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your request dated August 27, 2010, as supplemented by additional correspondence dated November 29, 2010, December 20, 2010, March 23, 2011, May 23, 2011 and July 11, 2011 in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution from Plan C totaling Amount B. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error made by Financial Advisor F. Taxpayer A further represents that Amount B has not been used for any other purpose.

Taxpayer A asserts that following her husband's death, she relied heavily upon Financial Advisor F, with whom she and her husband had a long-standing banking relationship, to help manage her financial affairs. In June of 2008, Taxpayer A and Financial Advisor F discussed her intent to transfer assets from her late husband's profit sharing plan, Plan C, to her IRA, IRA X, maintained by Financial Institution M. Financial Advisor F advised Taxpayer A that he would send her the necessary forms after he reviewed Plan C. Some time thereafter, Taxpayer A received a form entitled "Authorization to Transfer Funds and/or Securities to Another Account within the Firm" from Financial Advisor F. Taxpayer A assumed that the account number on the form was the account number to IRA X, but in fact the account number for Account R, a non IRA account was entered on the form.

On Date 1, Taxpayer A executed the form she received from Financial Advisor F. On Date 2, Amount B was distributed from Plan C to Account R.

On Date 3, Taxpayer A was reviewing her finances with her new financial advisor, Financial Advisor G, and discovered that Amount B had been transferred to a non-IRA account instead of to IRA X on Date 2. On Date 4, Taxpayer A transferred the funds from Account R to Account S, maintained by Financial Institution N, where the funds currently remain.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement in section 402(c)(3) of the Code with respect to the distribution of Amount B.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account ("IRA") constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by errors made by Financial Advisor F, which resulted in Amount B being deposited into Account R, a non-IRA account.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount B from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into an IRA otherwise meeting the requirements of section 408 of the Code. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount B will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID *****) at (***) ***-****. Please address all correspondence to XXXXXXXXXXXX.

Sincerely yours,



*Jason Levine
Acting for Donnell
Littlejohn*

Donzel Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: XXXXXXXXXXXX, Power of Attorney